



Paper No. 6

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**OFFICE OF PETITIONS
A/C PATENTS**

In re Application of
Norman D. Cholewinsky
Application No. 09/369,756
Filed: August 6, 1999
For: Vehicle Entertainment System

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: DECISION REFUSING STATUS
: UNDER 37 CFR 1.47(b)
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This is in response to the petition under 37 CFR 1.47(b), filed March 1, 2000.

The petition is dismissed.

BACKGROUND:

The above-identified application was filed on August 6, 1999, without an oath or declaration, and naming Norman D. Cholewinsky as the sole inventor. On August 24, 1999, a "Notice to File Missing Parts of Application" was mailed by this Office, requiring an executed oath or declaration, a surcharge for the late filing of the oath or declaration and deficient basic filing fees for a non-small entity.¹

In response, on March 1, 2000 (Certificate of Mailing date February 24, 2000), petitioner obtained a four-month extension of time and timely filed the instant petition. The petition indicates Mr. Cholewinsky was employed by Rosen Products ("Rosen") at the time of the invention. As part of an employment contract, Mr. Cholewinsky had contracted to Rosen the rights to any invention made while in pursuit of his employ. Petitioner, Rosen's attorney, also indicates that he attempted to obtain a mailing address for Mr. Cholewinsky so that the required Declaration and Power of Attorney could be sent to him. Having obtained a telephone number from a telephone directory service, petitioner called Mr. Cholewinsky several times at what he believed was Mr. Cholewinsky's

¹ With the petition submitted March 1, 2000, petitioner has submitted a Verified Statement claiming small entity status, which explains the deficiencies in the filing fees as required by the Notice to File Missing Parts of Application.

telephone number, leaving voice mail messages requesting that Mr. Cholewinsky contact petitioner with a current mailing address. At the time of filing the petition, no response was received.

DEFICIENCIES UNDER 37 CFR 1.47(b):

A grantable petition under 37 CFR 1.47(b) requires:

- (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application paper (specification, claims and drawings);
- (2) an acceptable oath or declaration;
- (3) the petition fee;
- (4) a statement of the last known address of the non-signing inventor;
- (5) proof of proprietary interest; and
- (6) proof of irreparable damage.

Petitioner lacks items (1), (2), (4), and (6) set forth above.

As to item (1), it is unclear whether petitioner is claiming that Mr. Cholewinsky refuses to sign the oath or declaration or that he cannot be reached after diligent efforts. If petitioner is claiming that he refuses to sign the oath or declaration, clearly the petition is lacking in that no attempt has been made to mail the complete application papers to Mr. Cholewinsky. Mere unreturned voice mail messages, without more, are insufficient as proof of Mr. Cholewinsky's refusal. If petitioner is claiming that Mr. Cholewinsky cannot be reached, the petition is also deficient in proving that diligent attempts have been made to contact him. Petitioner has stated that calls were made to what was believed to be Mr. Cholewinsky number, but voice messages left were unreturned. By this, petitioner appears to be indicating that Mr. Cholewinsky cannot be found, since a current mailing address for him has not been obtained to which the application papers can be sent. However, a simple internet reverse directory search, using the telephone number provided, indicates that there is an address listed for a Mr. Norm Cholewinski in the Oregon area. This would be a good starting point to investigate, before petitioner can establish that Mr. Cholewinsky cannot be reached. See MPEP 409.03(d).

As to item (2), no oath or declaration was submitted with the instant petition. On March 15, 2000, a "Notice of Incomplete Reply" was mailed, indicating that an oath or declaration for this application is required. To date, no oath or declaration in compliance with 37 CFR 1.63 and 1.64 has been filed. See MPEP 409.03(b).

As to item (4), a statement of the inventor's last known address is missing and is required. See MPEP 409.03(e).

As to item (6), petitioner has not supplied proof of irreparable damage. See MPEP 409.03(g). A statement by the petitioner that the filing is necessary to preserve the rights of the parties would be sufficient.

Petitioner is given TWO MONTHS from the mailing date of this decision to respond, correcting the above-noted deficiencies. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(b)" and may include an oath or declaration executed by the inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

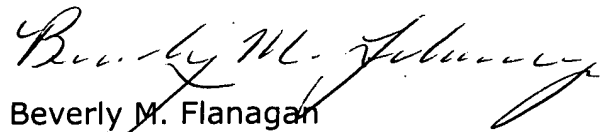
Further correspondence with respect to this matter should be addressed as follows:

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Telephone inquiries related to this decision should be directed to Petitions Attorney Elenore Niu at 703-305-0272.



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